

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RYAN SHEEHAN,	*	Case No. 19-CV-4154 (DLI)
	*	
Plaintiff,	*	Brooklyn, New York
	*	July 14, 2021
v.	*	
	*	
CONSENSYS, INC.,	*	
	*	
Defendant.	*	
	*	
* * * * *		

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE TARYN A. MERKL
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:	JORDAN A. EL-HAG, ESQ. El-Hag and Associates PC 777 Westchester Avenue, Suite 101 West Harrison, NY 10604
For the Defendant:	SCOTT M. COOPER, ESQ. Davis Wright Tremaine LLP 1251 Avenue of the Americas, 21st Fl New York, NY 10020

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1 (Proceedings commenced at 3:04 p.m.)

2 THE CLERK: This is civil cause for a status
3 conference, Docket 19-CV-4154, Sheehan vs. Consensys, Inc.
4 Before asking the parties to state their appearance, I would
5 like to note the following.

6 Persons granted remote access to proceedings are
7 reminded of the general prohibition against photographing,
8 recording and re-broadcasting of court proceedings.

9 Violation of those prohibitions may result in
10 sanctions, including removal of court-issued media
11 credentials, restricted entry to future hearings, denial of
12 entry to future hearings or any other sanctions deemed
13 necessary by the Court.

14 Will the parties please state their appearances for
15 the record, starting with the plaintiff?

16 MR. EL-HAG: Jordan El-Hag on behalf of plaintiff.
17 Good afternoon, Your Honor.

18 THE COURT: Good afternoon.

19 MR. COOPER: Good afternoon, Your Honor. This is
20 Scott Cooper of Davis Wright Tremaine on behalf of Defendant
21 Consensys.

22 THE COURT: Good afternoon. So we're here today,
23 obviously new to this case which has been pending for a while.
24 I'm trying to get a sense of what's going on.

25 Obviously, we have reviewed the documents on the

1 docket, including the most recent letters indicating that the
2 plaintiff is still suffering following his medical crisis of
3 2020.

4 So I'd like to start with you, Mr. El-Hag, to get a
5 sense of where things stand with regard to the plaintiff and
6 what you think we need to do with this case.

7 MR. EL-HAG: Thank you, Your Honor.

8 To be honest, this is really the first time I've
9 ever had to deal with something like this, so I'm just kind of
10 going with the -- I don't want to say the flow, but as things
11 develop, I'm just trying to advocate the best I can on behalf
12 of my client.

13 You know, the family would like to try to resolve
14 this case and focus on Mr. Sheehan's health and recovery if at
15 all possible.

16 I think they're very flexible and willing to do so
17 at what they would consider a nominal settlement amount.
18 Obviously, Mr. Sheehan has more significant issues he has to
19 deal with in his life at this point.

20 At the same time, you know, his parents -- his
21 mother has power of attorney, doesn't want to just, you know,
22 give up on the lawsuit if at all possible. I don't think --
23 not that I don't think.

24 Mr. Sheehan really can't participate fully in
25 litigation at this point. He does need more time to heal.

1 He is capable of making decisions concerning the
2 direction of the case with the assistance of his mother as
3 power of attorney.

4 However, he really, you know, because of his medical
5 crisis, lost his ability to see. And so he really can't read
6 documents. He's still learning how to walk again. And this
7 is just this slow progression of healing.

8 And I don't think there's a medical consensus as to,
9 you know, hey, this is the best it's going to be for him or if
10 more time is needed and, you know, what is expected. Like
11 nobody really knows. They don't know what caused this to him.
12 So I'm kind of flying in the dark.

13 And I think the preference for the family would be
14 to just settle this for, you know, a number they feel is
15 reasonable and fair.

16 And if that's not possible, they'd like to just
17 afford their son the opportunity to heal until it's determined
18 that he either can't participate any longer or he can, and he
19 can litigate the claims.

20 THE COURT: So is it fair to say that the prognosis
21 is unclear?

22 MR. EL-HAG: Yes, Your Honor.

23 THE COURT: And the timing is also very unclear?

24 MR. EL-HAG: Yes. And to be honest, I would -- I --
25 it's -- you know, I haven't had -- because of COVID and

1 everything, it's been a little difficult to -- you know, I
2 can't get access to the doctors so easily. I don't have a
3 detailed medical report.

4 And if the Court would want something like that,
5 I -- I'd have to get in touch with his doctors and try to get
6 something more detailed. But all my communications with the
7 families, they just -- they don't know how things are going to
8 develop.

9 THE COURT: Right. All right.

10 So turning to you, Mr. Cooper. What are your
11 thoughts on what Mr. El-Hag just shared with regard to the
12 family's interest in trying to resolve this matter to permit
13 Mr. Sheehan an opportunity to sort of focus on his health and
14 recovery?

15 And, you know, I understand that discovery may have
16 been interrupted in this case, but I'd like to hear your
17 thoughts on the potential for settlement discussions to resume
18 or what you think we need to do with regard to this case.
19 Mr. Cooper?

20 MR. COOPER: Well, Your Honor, with regard to
21 settlement, I mean, this -- Mr. Sheehan's claims were
22 frivolous from the outset, and they remain frivolous now. My
23 client's not -- they're not willing to pay to settle.

24 We can entertain discussions about a walkaway in
25 which we would agree -- excuse me, we would agree -- in

1 exchange for Mr. Sheehan voluntarily dismissing his claims
2 with prejudice, we would agree to not pursue our costs and
3 fees following our motion for summary judgment.

4 But other than, there's no appetite at this time to
5 pay any money to settle, especially given the fact that
6 Mr. Sheehan, according to Mr. El-Hag, is in no position to
7 litigate.

8 And there's absolutely no information or suggestion
9 coming from the other side of the V, so to speak, as to when
10 Mr. Sheehan, if ever, will be able to resume prosecuting his
11 own claims.

12 The second part of your question, Your Honor, as to,
13 okay, well, you know, let's picture a world where, eventually,
14 hopefully in the near future, Mr. Sheehan is able and
15 available to prosecute his claims through discovery, what
16 would need to happen to get us back on track, in short, Your
17 Honor, we would need, I would imagine, you know, no fewer than
18 several executed HIPAA authorizations.

19 We need, at this point, Your Honor, a year's worth
20 of medical records from his third-party healthcare providers.

21 You know, to catch you up to speed, Your Honor,
22 absolutely nothing has happened with regard to discovery in
23 the past year that Mr. Sheehan claims to have been
24 incapacitated.

25 And, you know, judging from Mr. El-Hag's

1 representations, I would imagine that between a coma and
2 cardiac arrest and recovery, this is -- there are probably
3 thousands of pages of medical records and files and charts to
4 which we would be entitled and would have to review and would
5 have to, you know, incorporate into a larger or greater
6 deposition outline and eventually -- to eventually be prepared
7 to take Mr. Sheehan's deposition.

8 In addition to Mr. Sheehan's eventual deposition, if
9 he decides to prosecute this case, we might also need to take
10 the deposition of his one-time mental health therapist, Dr.
11 Susan Jocelyn.

12 Other than that, you know, the -- from where we sit
13 right now on the 14th of July 2021, those are the big hurdles
14 once -- or if this case gets back on track.

15 THE COURT: Can I please ask why you think the
16 current medical records would be discoverable or relevant to
17 his claims that were filed in July of 2019?

18 MR. COOPER: Well, Your Honor, Mr. Sheehan is
19 claiming damages for significant -- severe emotional distress.
20 So it -- if what Mr. El-Hag has been telling us for the last
21 year or so is true in that Mr. Sheehan has been going through
22 this ordeal, and he's remained either blind or, you know,
23 significantly impaired with regard to his vision and any
24 number of functions, it would follow, I think, that his
25 medical condition and anything and everything related to it

1 would have some impact on his mental or emotional state such
2 that it would trump any sort of distress that he might
3 otherwise be feeling from losing his job with Consensys back
4 in April of 2018.

5 THE COURT: Mr. El-Hag, do you have thoughts on my
6 question that I first posed to Mr. Cooper, which is the
7 potential relevance of the current medical situation and the
8 records related to his medical emergency and how, if at all,
9 they relate to a fair ascertainment of the issues that were
10 filed in this case preceding that incident?

11 MR. EL-HAG: Mr. Cooper is technically correct. I
12 think that when an -- when a plaintiff is claiming emotional
13 distress damages, nearly all the medical records are fair
14 game.

15 I don't believe that we would be seeking emotional
16 distress damages based on the suffering that Mr. Sheehan has
17 incurred, you know, post this medical crisis. So I don't know
18 how relevant those would be.

19 I think that prior to, you know, the medical crisis,
20 anything is fair game. But there would just be no way that we
21 would be able to reasonably argue that, you know, he would
22 be -- you know, any of this pain and suffering after his
23 healthcare issue that he's current dealing with was caused by
24 the defendants.

25 So I don't really they're relevant, because we

1 wouldn't be arguing that the emotional distress was caused
2 after his issue. But I would leave that to the Court. And I
3 don't know what Mr. Cooper's response would be to my position.

4 THE COURT: I mean, that's really what I'm getting
5 at. When you have a major intervening incident like this, you
6 know, the question, I guess, then is the scope of the claim
7 damages and whether or not there's any attribution of his
8 current situation to the actions that he complains about with
9 regard to his loss of employment in this case.

10 So, Mr. Cooper, do you have any further thoughts on
11 this matter?

12 MR. COOPER: Well, Your Honor, I mean, I do not want
13 to put words in Mr. El-Hag's mouth. And certainly, if my
14 interpretation of what he just said is incorrect then, you
15 know, I'm happy to be corrected.

16 But it sounds as though Mr. El-Hag -- and perhaps he
17 might need to speak with his client or his client's family
18 before committing to this, but if what Mr. El-Hag is proposing
19 is some sort of stipulation that, you know, as of this point,
20 Mr. Sheehan is no longer pursuing emotional distress damages,
21 then certainly that's something that we could entertain.

22 And I think as a follow-up on top of that, if the
23 parties were to engage in some sort of stipulation to that
24 effect that -- then, yes, to your point, Your Honor, I don't
25 think we would need to go down that road to -- certainly not

1 to the extent that I had articulated a few moments ago about
2 obtaining the last year's worth of medical records if, of
3 course, Mr. Sheehan is not pursuing emotional distress.

4 THE COURT: I don't think he said that. I think --
5 I don't think he said he wasn't pursuing emotional distress
6 damages at all.

7 I think he said that there was emotional distress
8 that occurred prior to this medical crisis that he suffered in
9 May of 2020 and that any and all medical records relating to
10 Mr. Sheehan's care and treatment in advance of this crisis
11 could be discoverable but that he was not in any way saying
12 that the emotional distress he's currently suffering under, in
13 light of his changed situation, is attributable.

14 Is that -- Mr. Hag, am I -- Mr. El-Hag, am I getting
15 your position a little bit more accurately?

16 MR. EL-HAG: You are, Your Honor. And I would even,
17 to my client's detriment, expand upon that. Even a back-pay
18 award would be, at this point, you know, cut off, because my
19 client is just unable to work at this point from the medical
20 crisis. So I think largely the damages were for the most part
21 cut off like once this medical issue has -- took place.

22 THE COURT: Well, that's a very fair --

23 MR. EL-HAG: Because he -- he --

24 THE COURT: -- assessment.

25 MR. EL-HAG: Yeah. He's unable to -- yeah. He's

1 unable to work. So he can't -- he's not entitled to back pay
2 under the law, so --

3 THE COURT: So in light of this additional context,
4 Mr. Cooper, is it a fair statement that the defendant has
5 literally no interest in having settlement discussion, even if
6 it's a nuisance value to just have this case settle?

7 MR. COOPER: I mean, I can't kind of preemptively
8 say, Your Honor, that if Mr. El-Hag, just speaking
9 hypothetically, came to me tomorrow and said, okay, if
10 Consensys is willing to pay \$100, we'll settle the case, I
11 can't tell you right now, Your Honor, that Consensys would say
12 no way, it's walk away or nothing.

13 But I can tell you that Mr. El-Hag has not
14 approached us in recent years about settlement. We don't know
15 what he means by what the family might consider a reasonable
16 amount. And I do know that, as of now, I'm only authorized to
17 suggest or propose the -- a walkaway as I did earlier.

18 THE COURT: I understand. I do think, though, given
19 the incredibly difficult change of circumstances that the
20 plaintiff is facing in this case that it would make sense for
21 the two of you to try to have a settlement conversation,
22 whether that's privately or, you know, with the Court's
23 support.

24 But before we turn to that, I want to also follow up
25 with one thing with Mr. El-Hag as to the plaintiff's current

1 circumstances. The docket had indicated, you know, some back
2 and forth with regard to whether or not there needed to be a
3 guardian ad litem appointed on behalf of the plaintiff here.
4 It does sound like his medical situation has changed somewhat
5 over the months that he has been ill.

6 What is happening with him legally? You said his
7 mother has power of attorney. Is there anything else that
8 needs to be done to protect his interests and rights,
9 Mr. El-Hag?

10 MR. EL-HAG: No, Your Honor. According to his
11 mother, you know, Mr. Sheehan is capable of, you know, having
12 a conversation.

13 And, you know, if something is explained to him, he
14 can process it and make a decision for himself. But, you
15 know, he's really unable to care for himself, and she had
16 power of attorney for managing his -- you know, his disability
17 payments, things along those lines. He's living with them.

18 So he can make decisions concerning the case,
19 according to her. If we would need a doctor to provide an
20 opinion concerning that, you know, I'd -- I'd have to obtain
21 that. But according to the family, they say that he is
22 capable of making a decision and is cognizant.

23 THE COURT: Okay. So, you know, in terms of next
24 steps, obviously, it sounds like discovery isn't really
25 possible here.

1 But at the same time, you know, it's not a great
2 practice to just have a case, you know, kind of lingering with
3 a plaintiff who's not able to fully participate in the
4 litigation, although completely for reasons outside of his
5 control.

6 We understand and want -- you know, obviously want
7 to give him the opportunity to try to recover without
8 prejudicing him with regard to this case.

9 All of that being said, though, it seems to me that
10 the parties really should try to talk about this and figure
11 out if there is anything that the defendant is comfortable
12 with that the plaintiff might be willing to accept in order to
13 let both parties put this matter to rest.

14 So, you know, Mr. El-Hag, do you think that that's
15 realistic for you and Mr. Cooper to try to have a
16 conversation?

17 MR. EL-HAG: I am -- I'm always willing to have a
18 conversation. Whether the defendants are, you know,
19 interested in putting out a number that would satisfy the
20 family and would encourage them to walk away is a different
21 story.

22 I am certainly in a position where I would encourage
23 them to really understand the benefit of settling. And it's
24 not how they wanted this to play out, not how I wanted it to
25 play out, but I would strongly urge them to be extremely

1 flexible in their negotiating position.

2 And, Your Honor, I just -- you know, and I'm
3 brainstorming. I don't have this fully fleshed out and in
4 front of me right now.

5 But as we're discussing it, I would point out that I
6 think one of the barriers to resolving this case is one of the
7 defendant's defenses, which is they are claiming that they
8 made the decision to terminate Mr. Sheehan prior to them
9 having knowledge of his disability. And I don't believe that
10 that's correct based on the defendant's contention.

11 So to give some background, it's a disability
12 discrimination claim. My client had addiction issues. And he
13 went to the company, and he had expressed the need to go to
14 rehabilitation, and he was fired, you know, almost immediately
15 after that.

16 The defendant -- you know, and when we filed the
17 charge with the Division of Human Rights, they had submitted a
18 position statement, and they outlined a legal argument that
19 says that they had made the decision to terminate Mr. Sheehan
20 for legitimate business reasons prior to him disclosing this
21 issue. And from our perspective, the termination did happen
22 after he disclosed the issue.

23 And there's case law, not in this circuit but in
24 other circuits, concerning this issue. And I was thinking
25 that if this case is held up, and we can't resolve the case,

1 that we might be in a position to get an opinion on that
2 defense while we're waiting for Mr. Sheehan to recover. We
3 could brief that.

4 And I think if we lose that from the plaintiff's
5 side, then we lose the case. If we prevail on it, then I
6 think that would change the defendant's perspective. But,
7 obviously, it's -- that's theoretical.

8 And I think Mr. Cooper might be able to elaborate a
9 little bit more on the defense and my -- the idea, but I just
10 wanted to put that out there as something to consider as a way
11 to kind of move the ball.

12 THE COURT: Well, that is an interesting question,
13 the question of whether or not there are certain facts in the
14 case that could be fleshed out regardless of Mr. Sheehan's
15 ability to participate that could be -- kind of move the case
16 in one way or the other. So, Mr. Cooper, do you have any
17 thoughts on that?

18 MR. COOPER: Well, Your Honor, I don't think we
19 would have any interest at all in doing that, frankly.

20 If Mr. Sheehan is unavailable to participate in some
21 of the basic elements of discovery such as sitting for a
22 deposition, I don't know why we would want to jump the gun and
23 start making our summary judgment arguments and putting
24 together our -- what sounds like a mini summary judgment brief
25 in advance of the completion of discovery in a case that might

1 never pick up or resume again.

2 And Mr. El-Hag is right. That is -- the issue
3 that -- to which he alludes -- or the fact to which he alludes
4 is a big sticking point for Consensys that -- I don't want to
5 get too far into the weeds unless you really want to, Your
6 Honor, but that the basics from our standpoint the case is
7 that Mr. Sheehan was hired and started in or about the first
8 week of February 2018.

9 He consistently left work without notice, was
10 unavailable when he was supposed to be available, was
11 completely unproductive and unreliable, was warned about this
12 and the need to improve.

13 His two supervisors scheduled a meeting with
14 Mr. Sheehan to address these very issues and get him -- and
15 put him on notice that he was on, you know, his last leg, so
16 to speak, give him one final chance. And Mr. Sheehan skipped
17 the meeting without notice.

18 And promptly after that meeting that was supposed to
19 take place but didn't, the two supervisors then went to
20 Consensys management, asked for approval to terminate
21 Mr. Sheehan's employment and received that approval in an
22 email that, of course, is date stamped and time stamped in
23 a -- at a date and time in advance of when Mr. Sheehan alleges
24 that he first disclosed anything that could be considered a
25 disability.

1 So from defendant's standpoint, Your Honor, it's
2 pretty clear here. And we've shown -- we discussed this way
3 back at the beginning of the litigation with Mr. El-Hag where
4 we pointed out this particular email and the date stamp and
5 the time stamp and where it all fits in within Mr. Sheehan's
6 allegations. But, you know, we -- I guess we were
7 unpersuasive at that point in time.

8 But to your direct question, Your Honor, I don't
9 think we have any interest, speaking on behalf of defendant,
10 in some sort of, you know, pseudo or mini or preemptive
11 summary judgment briefing in advance of the completion of
12 discovery.

13 THE COURT: So I don't think that was my question
14 exactly. It was close but not quite. My question was, are
15 there factual issues that we can try to resolve?

16 Is there anything we can do in discovery to resolve
17 factual disputes that could move the needle on where this case
18 is going? And it sounds like your -- the facts as you've
19 proffered them suggest that there were internal employment
20 issues and that the company was already making its internal
21 decisions.

22 And, you know, Mr. El-Hag, do you have a factual
23 dispute with what Mr. Cooper just laid out in terms of the
24 timing of these -- this management meeting and when the
25 supervisors, you know, had sent this email regarding his --

1 the concerns they had about his performance?

2 MR. EL-HAG: Yeah. There's a factual dispute, but
3 all of the dispute would come from Mr. Sheehan's testimony.
4 So there are emails, but there's context, you know, behind the
5 scenes to everything that's going on. And he would have to be
6 the one to set forth the explanation of everything. So I
7 think --

8 THE COURT: Okay.

9 MR. EL-HAG: I don't believe that there's -- if
10 Mr. Sheehan, ultimately -- if it's determined he can't
11 participate, I don't see how this case can go forward.

12 THE COURT: Okay. I mean, and that -- it's really
13 the question I had about whether there's a factual dispute is
14 really the dispositive question, because it sounds like it
15 couldn't be decided on summary judgment even if it were to be
16 briefed if there is a fact dispute as to the timing of events,
17 and Mr. Sheehan is one of the only participants or parties
18 that could provide the relevant evidence.

19 You know, are there any other witnesses that could
20 be, from the plaintiff's perspective, you know, deposed or
21 anything else that could occur to help resolve any factual
22 disputes if Mr. Sheehan cannot proceed?

23 MR. EL-HAG: No. No, Your Honor.

24 THE COURT: Okay. So, you know, I hear you,
25 Mr. Cooper, in terms of why would you compromise the

1 defendant's position; why would you spend any money as
2 Consensys if this plaintiff is incapacitated and cannot go
3 forward. And the answer to that is simple: nuisance value.
4 Close the case. Let everybody move on with their lives.

5 So I would encourage the two of you to have a
6 conversation, and a frank one, as to what is really going to
7 happen in this case and when. Because I am very sympathetic
8 to Mr. Sheehan's position. It sounds like he suffered a
9 terrible medical tragedy. But it also sounds that it was
10 truly life-changing and that, you know, these other aspects of
11 his life are going to have -- inevitably be affected.

12 And so, you know, I know you're doing your best,
13 Mr. El-Hag. I -- this is a tough situation to be in as an
14 attorney.

15 And I understand where you're coming from too,
16 Mr. Cooper. But at the same time, I do think that continuing
17 to have this case linger indefinitely is not in Consensys'
18 best interest. There -- your time is not free. And they
19 should -- you know, I think all the parties should really
20 think hard about what is reasonable to have this case just get
21 resolved.

22 So I would ask that the two of you try to have a
23 conversation and that we set this case down for another status
24 in about 45 days, and we'll see where we're at.

25 Does that sound like a plan to you, Mr. El-Hag?

1 MR. EL-HAG: Yes, Judge.

2 THE COURT: Mr. Cooper?

3 MR. COOPER: Sure thing, Your Honor.

4 THE COURT: Okay. So, Ms. Cahn, are you still on
5 the line? Can we get a date for, I don't know, late August?
6 I know we're booked up, but can we try?

7 THE CLERK: Sure. Let me take a look and see what
8 we got.

9 THE COURT: I think that thing on August 17th might
10 be going away.

11 THE CLERK: Okay. If it does, we can do August 17th
12 at 9:30.

13 MR. COOPER: I'm sorry, Your Honor. I actually have
14 a -- this is Mr. Cooper. I have a deposition on that date.

15 THE COURT: Okay. Let -- Ms. Cahn, can we find some
16 other date?

17 THE CLERK: We can do August 19th at 4.

18 MR. EL-HAG: This is Jordan. That's good for me.

19 MR. COOPER: This is Mr. Cooper. I actually have
20 another deposition in the same case on that day as well. I
21 would hope that would end before 4 p.m., but I can't say with
22 any certainty, and I don't want to take up the Court's
23 schedule or calendar and have to request an adjournment at the
24 last minute.

25 THE COURT: I understand, and I appreciate that.

1 THE CLERK: Let's see.

2 THE COURT: If the thing is going away on the 17th,
3 it means it's also going away on the 16th. So do you have a
4 deposition on the 16th as well?

5 MR. COOPER: Thankfully, Your Honor, I do not. So I
6 would be happy (indiscernible) for a court appearance on the
7 16th.

8 MR. EL-HAG: It's fine for me.

9 THE COURT: Okay. So what time, Ms. Cahn?

10 THE CLERK: August 16th at 9:30.

11 THE COURT: Okay. That's a date. And, you know,
12 Mr. Cooper, I fully understand where Consensys is coming from,
13 but this is, obviously, a very highly unusual situation.

14 And, you know, I think that if the parties can have
15 a frank conversation with the mom's involvement, Mr. Sheehan's
16 involvement and just try to really understand kind of, you
17 know, the likelihood that this case can proceed, I do think
18 Mr. El-Hag's comment that the parties are willing -- the
19 plaintiff's willing to be flexible is something that you can
20 work with, you know?

21 So, you know, please do your best to have some
22 conversations, and we will look forward to hearing from you on
23 the 16th as to whether or not there's been any progress.

24 MR. COOPER: All right. Thank you, Your Honor.

25 THE COURT: Okay. Thank you both. Have a good

1 afternoon.

2 MR. EL-HAG: You too.

3 MR. COOPER: You too. Thank you.

4 THE COURT: Take care.

5 (Proceedings concluded at 3:34 p.m.)

6 I, CHRISTINE FIORE, Certified Electronic Court
7 Reporter and Transcriber, certify that the foregoing is a
8 correct transcript from the official electronic sound
9 recording of the proceedings in the above-entitled matter.

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13 _____ October 5, 2021

14 Christine Fiore, CERT
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